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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MIGUEL A. ROJAS,

11-CV-4322 (CS) (PED)

Petitioner,

- against -

PHILIP D. HEATH, Superintendent,

**ORDER ADOPTING
REPORT AND
RECOMMENDATION**

Respondent.

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Seibel, J.

Before the Court is the Report and Recommendation ("R&R") of United States Magistrate Judge Paul E. Davison, dated October 18, 2012, (Doc. 21), recommending denial of Petitioner's Petition pursuant to 28 U.S.C. § 2254, (Doc. 2). Familiarity with the prior proceedings and the R&R is presumed.

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise objections to the magistrate judge's report and recommendation, but they must be "specific," "written," and submitted "[w]ithin 14 days after being served with a copy of the recommended disposition." Fed. R. Civ. P. 72(b)(2); *accord* 28 U.S.C. § 636(b)(1)(C). A district court must conduct a *de novo* review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C); *see* Fed. R. Civ. P. 72(b)(3) ("The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions."). The district court may adopt those portions of a report and recommendation to which no timely objections have been made,

provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); Fed. R. Civ. P. 72 advisory committee's note (b).

Plaintiff has raised no objections to the Magistrate Judge's carefully considered R&R. I have reviewed the R&R and find no error, clear or otherwise. Accordingly, I adopt the R&R as the decision of the Court. The Petition is dismissed with prejudice. As Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c); *Lozada v. United States*, 107 F.3d 1011, 1016-17 (2d Cir. 1997), *abrogated on other grounds by United States v. Perez*, 129 F.3d 255, 259-60 (2d Cir. 1997). The Clerk of the Court is respectfully directed to close the case.

SO ORDERED.

Dated: November 16, 2011
White Plains, New York



CATHY SEIBEL, U.S.D.J.